

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

For Construction Permit for a
 New FM Station on channel 279A
 in El Rio, California

MM DOCKET NO. 93-87

File No. BPH-911216MC

File No. BPH-911216MD

RECEIVED

SEP 16 1993

To: Honorable John M. Frysiak
 Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

OPPOSITION OF SELZNICK TO PETITION TO ENLARGE

Loren Selznick respectfully submits this Opposition to the
 "Petition to Enlarge Issues," filed by Raymond W. Clanton on
 September 3, 1993.

1. Clanton advances two contentions. His initial argument is that, because Selznick exchanged no "financing documents" as part of the standardized document production on August 31, 1993, then allegedly she had no contemporaneous documentation of her December, 1991 financial certification. See Petition at 1-3. Clanton then concludes that the alleged lack of such documentation now requires the specification of both false certification and misrepresentation issues with respect to the financial certification in Selznick's December 16, 1991 application. See Petition at 3-4. Clanton misconceives the facts and misunderstands the law.

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2. First, the facts are not as Clanton conceives them. Although Selznick obtained no bank letter, promissory note or other "financing document" from her committed financial source (Joseph Dailey, Esq.) prior to the December 16, 1991 filing of her FM application, no such formal loan document need be obtained for an applicant to be "reasonably assured" of its financial qualifications prior to filing the application. The FCC's goal is merely to prevent a party from filing an application and only later finding a means to become financially qualified.^{1/} Here, Selznick was familiar with Dailey's financial statement prior to filing her 1991 application because they practiced law together and shared a common computer system on which his financial statement was contained. It is irrelevant that there is no copy of a 1991-generated document in existence today. Moreover, where the funding source itself has submitted, as in this case,^{2/} both (i) a sworn statement that he gave "reasonable assurance" to the applicant prior to her financial certification and (ii) uncontroverted documentation as to his net liquid assets at the time of the applicant's certification, there can be no prima facie showing as to a false certification. See Revision of Form 301, 4 FCC Rcd 3853, 3859 (1989); see also Pleasant Hope Broadcasting Co., L.P., 6 FCC Rcd 6553 (Rev. Bd. 1991).

^{1/} The "bank letter" cases relied upon by Clanton (see Opposition at 8) are inapposite.

^{2/} See Appendix A.

Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989), aff'd, 941 F.2d. 1214 (D.C. Cir. 1991).

3. Clanton's second argument is that Selznick "remains" financially unqualified following the filing of her recent amendment. This contention can be promptly dispatched. Clanton presents no probative evidence that Selznick's revised cost estimate is legally inadequate. While Clanton quibbles about certain alleged "omissions" and absurdly suggests that Selznick's personal "living expenses" should have been included in the station's budget, the detailed cost information presented by Selznick and her California consultant manifestly establishes the reasonableness of Selznick's \$79,460 equipment budget and her \$10,000 monthly operating budget.^{3/} Moreover, Clanton conspicuously ignores the \$16,000 cushion built into the revised budget (even if Selznick's real estate is not liquidated pursuant to the disclosed appraisals) and he makes assumptions about Selznick's sale of real estate that have no basis in fact.^{4/} In sum, while Clanton quibbles with Selznick's practical, real-world cost refinements, he has failed to show that Selznick's revised cost estimates are so implausible or unreasonable that her proposal should be found prima facie unlawful. Selznick is currently financially qualified.

^{3/} In a detailed Sworn Declaration, consultant Brett Miller refutes each of the questions about Selznick's revised budget. See Appendix B.

^{4/} In a Sworn Affidavit, Ms. Selznick thoroughly refutes Clanton's false assumptions regarding the possible sale of her real property. See Appendix C.

CONCLUSION

The Petition to Enlarge Issues should be DENIED.

Respectfully submitted,

Robert Thompson

Robert Lewis Thompson
PEPPER & CORAZZINI
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202)296-0600

Counsel for Loren Selznick

September 16, 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In re Applications of)	MM DOCKET NO. 93-87
)	
RAYMOND W. CLANTON)	File No. BPH-911216MC
)	
LOREN F. SELZNICK)	File No. BPH-911216MD
)	
)	
For Construction Permit for a)	
New FM Station on channel 279A)	
in El Rio, California)	

To: Honorable John M. Frysiak
Administrative Law Judge

DECLARATION

1. My name is Joseph P. Dailey and I reside at 565 Peralta Hills Drive, Anaheim, California 92807. I make this declaration in support of the amendment to the application of Loren F. Selznick for a new FM station in El Rio, California concerning financial qualifications.

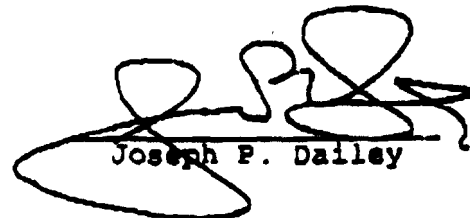
2. At the time Ms Selznick applied for the construction permit in December 1991, I gave her reasonable assurance that I would provide the funds necessary to construct the station and operate it for three months without revenue. At the time, we contemplated that the total cost would be \$360,070. Annexed to this declaration as Exhibit A is my personal financial statement as of November 30, 1991 with which Ms Selznick was familiar. Also annexed as Exhibit B is my personal financial statement as of August 27, 1993. I was and continue to be able to provide the funds originally contemplated.

3. In late July, 1993, Ms Selznick and I had a telephone conversation in which Ms Selznick told me that she had spoken with several brokers and consultants. She reported to me that she was advised that a much more streamlined approach to both construction and operations would be advisable for a start-up radio station. Specifically, Ms Selznick informed me that she was advised that the funds necessary would be less than \$110,000. With the substantially lower amount in mind, Ms Selznick also advised me that she thought she would be able to provide almost all of the funding herself. We agreed that Ms Selznick would provide as much of the funding as she could and that I would make up the difference with a loan of up to \$40,000.

4. If my funding is required, I am willing to provide a loan of up to \$40,000 for a term of 5 years at an interest rate of 12% with payments to commence one year after completion of construction of the radio station.

I swear under penalty of perjury that the foregoing is true and complete.

August 27, 1993



Joseph P. Dailey

Social Security..... 179-84-8445

Address..... 565 Peralta Hills Drive
Anaheim, California 92807

Telephone..... (714) 282-1170 (Home)
(714) 640-5426 (Office)

Occupations..... Attorney
President
RunTime Technologies, L.P.
610 Newport Center Drive, Suite 600
Newport Beach, California 92660

Peralta Hills Home (Appraised Value).....	\$1,600,000
Cash	\$218,000
Partnership Profits	\$230,864
Salary Receivable.....	\$50,000
Partnership Inventory Interest	\$150,368
RunTime Technologies Investment At Cost.....	\$420,000
Personal Property.....	\$250,000
Automobiles.....	<u>\$20,000</u>
Total.....	\$2,939,232

Mortgage Debt.....	\$975,000
Bank Loans.....	\$44,970
Notes Payable.....	\$0
Income Taxes Payable.....	\$0
Charge Accounts Payable.....	\$0
Total.....	\$1,019,970

Net Worth..... \$1,919,262

Sworn Declaration

1. My name is Brett Miller and I am a communications consultant who resides in Ventura County, California. I have had experience in directly advising numerous clients regarding the construction and/or start-up of Class A FM stations in California.

2. I have advised Loren Selznick regarding her proposed FM start-up in Ventura County, California. I authorized Ms. Selznick to submit my August 2, 1993 construction proposal to the FCC in connection with the proposed financial Amendment to her pending El Rio application.

3. I am aware that Ms. Selznick's competitor in the FM proceeding, Raymond Clanton, has raised certain questions about the advice that I have given to Ms. Selznick. This Declaration is submitted to answer Mr. Clanton's questions.

4. First, it is important to explain why I advised Ms. Selznick that her 1991 cost estimate of \$360,070 was unrealistically high. Simply put, no one in today's difficult FM environment would reasonable spend that much money to construct a start-up, Class A FM in Ventura County. Such high embedded costs could pose a survivability problem and are not necessary to construct and successfully operate a Class A FM station in Ventura County.

5. Second, none of Mr. Clanton's objections to my cost estimates is valid:

(a) He questions my \$15,000 estimate for "studio equipment" and "furniture". These items might more precisely be titled "miscellaneous studio equipment" and "furniture". Indeed, Mr. Clanton ignores that I separately budgeted over \$2,000 for remote control and EBS equipment, \$2,200 for a modulation monitor, \$3,400 for stereo generation/processing equipment and over \$10,000 for satellite interface and production. See Attachment 1. Thus, total "studio equipment" costs will exceed \$22,000. My use of the term "studio equipment and supplies" was meant to include studio equipment such as a CD-player, headphones, microphones and other miscellaneous items. It is important to keep in mind that Ms. Selznick proposed satellite-fed programming, which lowers the cost of studio/production outlays.

(b) He next contends that my estimate "omits" the cost to prepare the site and to remodel the studio. That is absolutely untrue. First, I advised Ms. Selznick in my August 2, 1993 letter that I had spoken to the tower site owner and that she would bear only the cost of constructing a transmitter building and 80' steel tower (for which I budgeted about \$10,000). I specifically noted that her site was multi-use already and there was already electricity available. Thus, site preparation was fully considered. Second, I advised Ms. Selznick that, because the rental market in Ventura County is so competitive, she would be able to get studio improvements "included in the rent base". See Attachment 1 at 2. I even

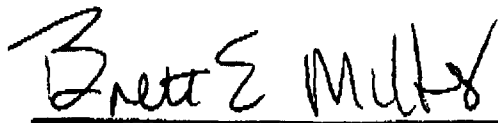
months of free rent" (id.). That is one reason why I advised her that monthly operating costs would be approximately \$10,000.

(c) Indeed, I advised Ms. Selsnick in a separate letter that the itemised operating costs were \$10,000 per month. I not only stand by that estimate, it is my opinion that her monthly costs will not exceed \$8,000.

(d) Finally, the approximately \$10,000 monthly operating budget already allows an amount to cover normal engineering and legal expenses (there is specific allowance for monthly use of a contract engineer). I also budgeted \$5,000 for engineering labor during construction. See Attachment 1 at 2.

6. In sum, not only am I confident about the \$79,460 construction budget and the \$10,000 monthly operating cost estimate, I believe the costs will be lower. These costs are based on paying "retail", when, in practice, I believe Ms. Selsnick can "do some shopping around" and get even better bargains. See Attachment 1 at 2.

The foregoing is true and complete under penalty of perjury.
Executed: September 16, 1993.


Brett Miller

MT/tda
01/09/93/09/miller.doc

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In re Applications of)	MM DOCKET NO. 93-87
RAYMOND W. CLANTON)	File No. BPH-911216MC
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)	
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in El Rio, California)	

To: Honorable John M. Frysiak
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AFFIDAVIT

LOREN F. SELZNICK, being duly sworn, deposes and says:

1. I am an applicant for a construction permit for a new FM station on channel 279A in El Rio, California. I make this affidavit in opposition to the Petition to Enlarge Issues filed by Raymond W. Clanton.

2. My intention in filing my Petition for Leave to Amend on August 30, 1993 was to acquaint the Honorable John M. Frysiak with what I had learned about the El Rio, California market and the reasons for the alteration of my plans. From what I have learned, in the current radio market, it is far wiser to put the station on the air as economically as possible and then have the physical plant grow with the station than to approach construction with the attitude that everything that could be desired in a radio station should be purchased at the outset with the hope that the station will grow into the equipment. The cost of the no-frills manner would enable me to cover most, if not all, of the expenses on my own. Recognizing that the cost was very close to my net liquid assets, I did obtain

another commitment from Joseph P. Dailey to lend up to \$40,000 for construction or operation of the station.

3. Prior to my filing my Petition for Leave to Amend, I obtained appraisals of each of my cooperative apartments located in New York, since I intend to sell both apartments and move to California if my application is granted. When I closely reviewed the appraisal of 67 East 11th Street, Apartment 401 (the "11th Street apartment"), I noticed that the appraiser had significantly understated the square footage of my apartment. The appraiser was on vacation, however, and unavailable to make any corrections until after the amendment was to be filed. The appraiser has since made an adjustment to the appraisal to increase the value from \$114,000 to \$118,000. A true copy of the revised pages of the appraisal report are annexed to this affidavit as Exhibit A.

4. In addition, there are some items that need to be clarified with respect to the sales of my apartments. First, I am not committed in any way to sell my apartment through a real estate broker. Although some people in New York choose to sell their apartments using brokers, many others choose to gain more on the sale by spending Saturdays and Sundays advertising and showing their own apartments. Therefore, I did not include a brokerage commission in the liquidity analysis included with my Petition for Leave to Amend. I did not purchase 99 Bank Street, Apartment 3L (the "Bank Street apartment") through a real estate broker. I have rented the Bank Street apartment to tenants both with and without brokers.

5. Furthermore, I am an attorney duly licensed to practice in New York. I represented myself at the closing when

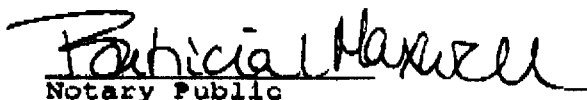
I purchased the Bank Street apartment. When I closed on the 11th Street apartment, my cousin and his partner kindly represented me at no charge. I, therefore, see no need to budget for an attorney to represent me at the closing.

6. There is also no need to budget for any tax on capital gains upon the sales of my apartments. The price of my Bank Street apartment plus improvements was approximately \$97,500, minus depreciation of \$7,518, leaving a current basis of \$87,482. The apartment was appraised at \$86,000. The price of the 11th Street apartment plus improvements was approximately \$126,300. That apartment was appraised at \$118,000. Accordingly, there will be no gains upon the sales of my apartments.

7. Finally, it was not my understanding that I needed to budget for my moving expenses and living expenses in my amendment. It is my intention to continue to work as an attorney until shortly prior to completion of construction and move and live for three months on the savings I accumulate during the construction period. I intend a long-term commitment to operate the El Rio station. This is a lifestyle change to which I have given a great deal of thought and I am willing to invest my life savings to make it happen.


Loren F. Selznick

Sworn to before me on this
15th day of September, 1993.


Notary Public

PATRICIA L. MAXWELL
Notary Public, State of New York
No. 00-4786160
Qualified in Westchester County
Commission Expires November 30, 1994

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Unit Charge \$ 820.71 / Mo. x 12 = 9,848.52 / 111.19 = 88.57 / Sq. Ft. of unit or more area, ...

Utilities included in unit charge: ☐ None ☒ Heat ☐ Air Cond. ☐ Electricity ☐ Gas ☐ Water ☒ Sewer

Note any fees, other than regular Condo/PUD charges, for use of facilities \$50 SPECIAL ASSESSMENT

To properly maintain the project and provide the services anticipated, the budget appears: ☐ High ☒ Adequate ☐ Inadequate

Compared to other competitive projects of similar quality and design, subject unit charge appears: ☐ High ☒ Reasonable ☐ Low

Management Group: ☐ Owners Association ☐ Developer ☒ Management Agent (Identify) Becker Ruben 212 580 2108

Quality of Management and its enforcement of Rules and Regulations appears: ☐ Superior ☒ Good ☐ Adequate ☐ Inadequate

Special or unusual characteristics in the Condo/PUD Documents or otherwise known to the appraiser that would affect marketability (if none, so state)

Exterior Terrace on fire escape - bedroom upstairs in loft area.

Comments NA

NOTE: FHLMC does not require the cost approach in the appraisal of condominium or PUD units

Cost Approach (to be used only for detached, semi-detached, and town-house units)

Reproduction Cost New _____ Sq. Ft. @ \$ _____ per Sq. Ft. = _____

Less Depreciation: Physical \$ _____ Functional \$ _____ Economic \$ _____

Depreciated Value of Improvements: _____

Add Land Value (if leasehold, show only leasehold value-attach calculations) _____

Pro-rata Share of Value of Amenities _____

Total Indicated Value: ☐ FEE SIMPLE ☐ LEASEHOLD _____

Comments regarding estimate of deprec. and value of land and amenity pkg. NA. Cost Approach not considered

relevant to valuing single unit within larger complex.

The appraiser, whenever possible, should analyze two comparable sales from within the subject project. However, when appraising a unit in a new or newly converted project at least two comparables should be selected from outside the subject project. In the following analysis, the comparable should always be adjusted to the subject unit and not vice versa. If a significant feature of the comparable is superior to the subject unit, a minus (-) adjustment should be made to the comparable if such a feature of the comparable is inferior to the subject, a plus (+) adjustment should be made to the comparable.

LIST ONLY THOSE ITEMS THAT REQUIRE ADJUSTMENT

ITEM	SUBJECT	COMPARABLE NO. 1			COMPARABLE NO. 2			COMPARABLE NO. 3		
Address-Unit No.	67 East 11th	30 East 9th St			115 East 9th St			245 East 25th St		
Proj. Name	NA	#5F			#18D			#18F		
Prox. to Sub		2 Blocks			3 Blocks			3/4 Mile		
Sales Price	\$	\$ 119,000			\$ 115,000			\$ 125,000		
Pr./Liv. Area	\$	\$ 168.07			\$ 160.83			\$ 178.57		
Data Source	Inspection	Institute Redbook			Institute Redbook			Institute Redbook		
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION +/- Adjust.			DESCRIPTION +/- Adjust.			DESCRIPTION +/- Adjust.		
Adjustment	8/93	11/92			8/92			9/92		
Location	Ave	Ave			Ave			Ave		
Site/View	4thflr/Ave	5thflr/Ave -500			18thflr/Good -7,000			18thflr/Ave -7,000		
Design & App	Ave/Ave	Ave/Ave			Ave/Ave			Ave/Ave		
Qty of Cnst	Good	Good			Good			Good		
Age	15 eff	34			20			20 eff		
Condition	Good	Good			Ave 5,000			Ave 5,000		
Living Area, Rm Count & Total Gross Living Area	Total B-rms Baths	Total B-rms Baths			Total B-rms Baths			Total B-rms Baths		
	4 1 1	3 1 1			3 1 1			3 1 1		
	652 Sq.Ft.	708 Sq.Ft. -3,000			715 Sq.Ft. -3,000			700 Sq.Ft. -2,500		
Basement & Bemt.	NA	NA			NA			NA		
Fin. Rooms	NA	NA			NA			NA		
Funct. Util.	Ave	Ave			Ave			Ave		
Air Cond.	Unit	Unit			Unit			Unit		
Storage	Ave	Ave			Ave			Ave		
Park. Facil.	NA	NA			NA			NA		
Common Elements & Recreational Facilities	NA	NA			NA			NA		
	Ave	Ave			Ave			Ave		
Mo. Assess.	820.71	564 -3,000			265 -6,500			209 -7,500		
Leaseh./Fee	Co-op	Co-op			Co-op			Co-op		
Special Energy Effic Items	Ave	Ave			Ave			Ave		
Other (eg. fireplaces, kitch. equip. remodeling)	Exterio terr	None 5,000			None 5,000			None 5,000		
	NA	NA			NA			NA		
Sales or Financing Concessions	Conv	Conv			Conv			Conv		
Net Adj. Tot		Plus Minus -1,500			Plus Minus -6,500			Plus Minus -7,000		
Indicated Value of Subject		\$ 117,500			\$ 108,500			\$ 118,000		

Comments on Market Data Analysis: Sales selected were best available at time of inspection. Assgn

not based on requested minimum value or mortgage amount.

INDICATED VALUE BY MARKET DATA APPROACH

INDICATED VALUE BY INCOME APPROACH

(If applicable) Econ. Market Rent \$ NA /Mo. x Gross Rent Multiplier NA = \$

118,000

This appraisal is made ☒ "as is" ☐ subject to repairs, alterations, or conditions listed below

☐ Subject to completion per plans and specifications

Comments on Conditions or Appraisal Most weight given to sale #1 due to its overall similarity to the subject in size, location and site.

Final Reconciliation Sales Comparison Approach provides the best indication of value.

Construction Warranty ☐ Yes ☒ No

Name of Warranty Program

Warranty Coverage Expires

This appraisal is based upon the above requirements, the certification, contingent and limiting conditions and Market Value definition that are stated in

☐ FHLMC Form 439 (Rev. 7/86) FNMA Form 1004B (Rev. 7/86) filed with client

1993

☐ attached

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF

14 August

1993

to be \$

118,000

Appraiser

H. Chuku

Review Appraiser (If applicable)

Henry A. Salmon

Date Report Signed 14 August

1993

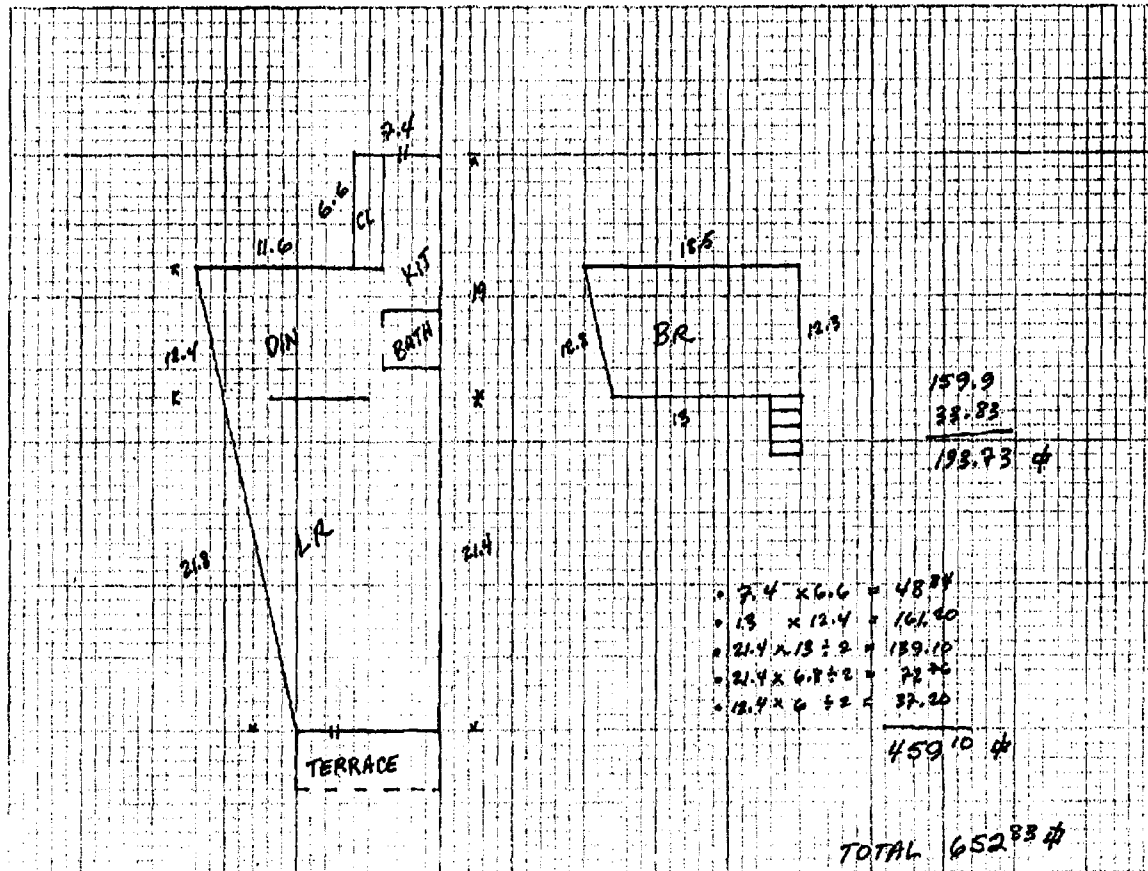
☐ Did

☒ Did Not Physically Inspect Property

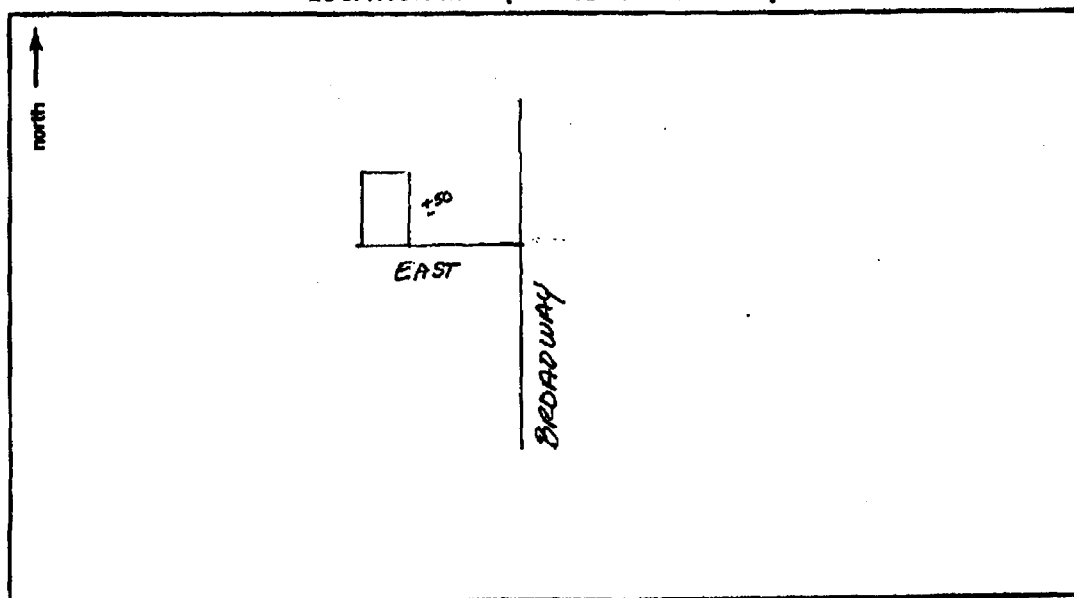
MAP SKETCH ADDENDUM

Borrower/Client			
Property Address			
City	County	State	Zip Code
Lender			

BUILDING SKETCH



LOCATION MAP [*SUBJECT PROPERTY]



OVER FOR PHOTO ATTACHMENTS

CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Opposition of Selznick to Petition to Enlarge " was served by prepaid, First Class U.S. Mail on this 16th day of September 1993, on the following:

* Honorable John M. Frysiak
Room 223
Federal Communications Commission
2000 L Street, NW
Washington, DC 20036

* Paulette Laden, Esq.
Hearing Branch -- Room 7212
Federal Communications Commission
2025 M Street, NW
Washington, DC 20054

Jerrold D. Miller, Esq.
Miller & Miller, P.C.
1990 M Street, NW
Suite 760
Washington, DC 20036


Karen D. Anderson

* By Hand